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Standing Committee on the Legislative Assembly

Comité permanent de l'Assemblée législative

Construction Lien Amendment Act, 2017

Loi de 2017 modifiant la Loi sur le privilège dans l'industrie de la construction

2nd Session
41st Parliament

Wednesday 25 October 2017

2e session
41e législature

Mercredi 25 octobre 2017

Chair: Monte McNaughton
Clerk: William Short

Président : Monte McNaughton
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

COMITÉ PERMANENT DE L'ASSEMBLÉE LÉGISLATIVE

Wednesday 25 October 2017

Mercredi 25 octobre 2017

The committee met at 1300 in committee room 1.

CONSTRUCTION LIEN AMENDMENT ACT, 2017

LOI DE 2017 MODIFIANT LA LOI SUR LE PRIVILÈGE DANS L'INDUSTRIE DE LA CONSTRUCTION

Consideration of the following bill:

Bill 142, An Act to amend the Construction Lien Act / Projet de loi 142, Loi modifiant la Loi sur le privilège dans l'industrie de la construction.

The Chair (Mr. Monte McNaughton): Welcome, everyone, to the Standing Committee on the Legislative Assembly. We're here for public presentations on Bill 142, An Act to amend the Construction Lien Act.

CANADIAN COUNCIL FOR PUBLIC-PRIVATE PARTNERSHIPS

The Chair (Mr. Monte McNaughton): I'd first like to call the Canadian Council for Public-Private Partnerships for their presentation. Each presenter today will have up to 10 minutes for their presentation, and the remaining time will be split equally between each caucus for questions.

If you'd first begin by stating your name for Hansard, and then you can begin.

Mr. Mark Romoff: Good afternoon. My name is Mark Romoff and I'm the president and CEO of the Canadian Council for Public-Private Partnerships.

Mr. Steven Hobbs: Steven Hobbs, director of strategic planning and partnerships at the Canadian Council for Public-Private Partnerships.

The Chair (Mr. Monte McNaughton): Go ahead.

Mr. Mark Romoff: Thank you very much. Good afternoon. I'd like to begin by thanking the Chair, the members of the standing committee and the Clerk for providing me with the opportunity today to speak to Bill 142, An Act to amend the Construction Lien Act. As just introduced, I'm joined by my colleague Steven Hobbs.

The Canadian Council for Public-Private Partnerships supports the principles put forward in Bill 142. We believe the government of Ontario has taken the right approach in commissioning an expert report and has been very open to stakeholder feedback through that process and now through the tabling of the bill. Despite our support for the principles of the bill, though, we do believe amendments will be needed to ensure the bill works effectively in practice.

Our organization is unique in that it represents close to 400 organizations from both the public and private sectors. We have a mandate to work with governments at all levels to promote smart, innovative and modern approaches to infrastructure development and service delivery, with the aim of achieving the very best outcomes and at the very best value for taxpayers.

In Ontario, the alternative financing and procurement model, known as AFP, has a strong history of building this province's infrastructure on time and on budget and maximizing value for taxpayer dollars. Over the 25-year history in Canada, there are now 118 projects with a value of over $64 billion for projects in Ontario that have reached financial close. It's a very significant portfolio in this province.

In particular, AFPs have been key to the delivery of health care infrastructure and major transportation projects in the province over the past two decades. The AFP model is a key part of the Moving Ontario Forward plan, which will deliver key infrastructure across the province, including a significant focus on public transit.

The expertise developed at Infrastructure Ontario has been critical to the success of these projects, and IO is now recognized worldwide as best-in-class in terms of procurement of AFPs. Its success continues to draw international delegations coming to this province to learn from the successes of Infrastructure Ontario and its AFP program.

With regard to Bill 142, the council supports the principles of prompt payment, adjudication and performance measures, but I'll speak to a few practical issues where the current drafting of the legislation could negatively impact AFP projects and lead to higher costs for Ontario taxpayers if left unamended.

When it comes to the issue of performance bonds, our assessment is that these requirements on AFP projects will add to the cost of projects, with little or no actual benefit to Ontarians. It is important to remember a few facts about AFP projects:

(1) The private sector does not get paid by government unless and until it delivers what it is mandated to do in the contract they've engaged in.

(2) Because of that structure, the private sector is responsible for putting its own financing at risk throughout the project.

(3) Because the private sector is taking on significant risk and because these are often large, complex projects, the private sector forms large consortia to ensure it has the best expertise to manage those risks over the life cycle of the project.

(4) These projects often have a long-term maintenance and operations component to the contract, ensuring that the asset is built to last.

These are important points to consider when thinking about the requirement of mandatory performance bonding. In order to secure financing to pursue an AFP opportunity, the consortium members will have significant thresholds to satisfy private lenders, including letters of credit and parent company guarantees. The lenders will have various step-in provisions in their lending agreements as well to ensure the project is successfully completed.

Remember, in an AFP, failure to deliver means that the equity providers are the first to lose, so they are heavily incentivized to ensure projects do not go south.

When thinking about mandatory performance bonds at 50% of the value of the project, this will certainly add to the cost of projects, so we have to ask: What will the government actually extract in benefit by requiring these kinds of bonds from AFPs? First, we know that lenders will still require letters of credit and parent company guarantees. Second, we know that no consortium member in an AFP in Canada has ever gone bankrupt during a project. And third, 50% performance bonds on projects the size of AFPs in Ontario could either be so difficult to actually raise the money necessary or add too much to the overall cost that projects would no longer be viable.

Performance bonding makes sense when the risk of failure or bankruptcy is high to protect the owner and subcontractors. These risks are likely much higher on projects with non-investment-grade companies. This is not the case with AFPs. The question, really, is, how much are you willing to add in cost to infrastructure projects to mitigate the chance of failure? With a 0% failure rate on AFPs, a 50% performance bond on a multi-billion-dollar project is likely doing little more than raising the cost of infrastructure to Ontario taxpayers.

Our recommendation would be to exempt AFPs from mandatory provisions of payment and performance bonding, because significant requirements are already in place to ensure performance on these projects.

On the issues of prompt payment and adjudication, the council supports processes to ensure that people are paid for the work that they do in a timely manner. In fact, AFP contracts already have extensive dispute resolution clauses to avoid drawn-out legal processes, which have been effective to date.

We do want to be supportive of stronger province-wide provisions, so let me just highlight our main challenge with the current language.

The largest issue with the bill, as drafted, is that the crown or other government owners cannot be brought into adjudication. That is a problem, in our view. Imagine a situation where a subcontractor takes the design builder to adjudication, arguing that they should be paid more because they performed tasks greater than what they were paid for—essentially, a question about scope. If the design builder was convinced that the subcontractor went beyond the scope of the project and should only be paid for what they interpret to be the scope set out in the contract, it can be very problematic if the subcontractor wins at adjudication. The design builder would then have to seek relief from the project co—this is the prime project contractor with the crown—who may or may not side with the design builder.

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The lenders may also not agree to the view of the adjudicator and not free up funds to project co and the design builder.

Even more problematic, the government owner of an AFP may not agree with the adjudicated ruling either, which would leave a stranded risk where either project co or the design builder is stuck footing the bill, with no recourse to force government to pay for an error they may have made or believe was caused at that level.

The only way to effectively ensure there is no stranded risk is by ensuring that all parties involved in an AFP can be subject to adjudication, including government.

The Chair (Mr. Monte McNaughton): You have 30 seconds, just so you know.

Mr. Mark Romoff: We would also argue that concurrent adjudication should be allowed so that these matters can all be dealt with through one lens and at the same time.

A similar argument on prompt payment and the need for government to be included in the legislation exists. If government does not pay the project co promptly, then project co may be on the hook to pay subcontractors money that it does not have.

We've outlined these issues in the submission we're leaving behind, as well as some possible solutions. I would be happy to address those in the Q&A that follows.

The Chair (Mr. Monte McNaughton): Okay. Perfect. Thank you very much.

We'll move to the official opposition: Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Mr. Romoff, for joining us today. You covered a lot of ground there. I don't think I could possibly process it all in the time that you were speaking, but a couple of points that you made on the surface seem to make a lot of sense to me—and I'm not an expert on the bill; I'm sitting in as a sub on the committee.

As we are today, if it's a government project, they're not subjected to the same rules as if it was a big corporation, as the owner of the project?

Mr. Mark Romoff: What we're saying is that under the arrangement that's provided for in the lien act, the government would not be subject to the adjudication process. From our perspective, that only leads to further complications later on and additional cost.

Mr. John Yakabuski: I was in small business for a lot of years. The worst ones at paying their bills for my

accounts receivables were always government—always. And they never paid interest even when they did pay. Even when they were five months late and they sent a cheque, it was only the amount of the invoice. So I understand where you've coming from there and how that might affect people in the industry.

On the other one, the 50% surety on bonds: I see that under the section of surety bonds, if it's a public project, it requires a 50%—

Mr. Mark Romoff: Performance bond.

Mr. John Yakabuski: —performance bond. By the contractor?

Mr. Mark Romoff: It will be by the project co or by the consortium that wins the contract.

Mr. John Yakabuski: That would be building it.

Mr. Mark Romoff: That's correct.

The Chair (Mr. Monte McNaughton): Thank you very much. We're going to move to Mr. Mantha. It's a minute 40 seconds for each caucus. Mr. Mantha.

Mr. Michael Mantha: Can you finish answering that?

Mr. Mark Romoff: I sure can. So 50% performance bonds: Take the case of the Eglinton Crosstown project, which has a value of about $4 billion. If the consortium were required to post a 50% performance bond, it would make it impossible—or they would certainly download that additional cost on their project bid. So in the end, the result is projects that end up being far more expensive than they would have been without the need to meet that obligation.

More importantly, there already are so many provisions in the way in which AFPs are structured that all of the risk is already downloaded on the private sector and the consortium. They've already got in place the kinds of performance guarantees, through letters of credit and other vehicles, that would make a performance bond an additional cost, but which demonstrate that it would accomplish very little in addition to what's already provided for.

Mr. Michael Mantha: I was elected in 2011. Since I was elected, I've seen individuals coming and asking for this legislation for the last six years. Repeatedly, we've come close, and then it has fallen to the wayside for various reasons. Why is that? If this legislation is really needed and is going to help industry—what's your take? What's the difficulty? What's the block? Why hasn't it come through?

The Chair (Mr. Monte McNaughton): Mr. Mantha, the time is used.

We'll move to the government: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Mr. Chair.

So you want the—and thank you again for—

Mr. Michael Mantha: Oh, no, you're supposed to let him answer the question from the previous member. That's the courteous thing to do.

Mr. Lorenzo Berardinetti: Oh, I'm sorry.

The Chair (Mr. Monte McNaughton): Order. Go ahead, Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Oh, do you want me to do that?

Okay. Thank you again for coming out today, Mr. Mark Romoff and—I'm sorry, but I didn't catch the other person's name here today.

Mr. Steven Hobbs: Mr. Hobbs.

Mr. Lorenzo Berardinetti: So you basically want to be exempt from the new rules, but you support the adjudication part, though.

Mr. Mark Romoff: We're not looking to be exempt. In fact, we believe that the modernization of the Construction Lien Act is a good idea, and we support it. But there are features of the legislation that is currently proposed which, in fact, will be deleterious to the smooth investment in infrastructure that has been the hallmark of Ontario, and which is why the approach that Ontario has put in place is recognized around the world as very best in class.

Mr. Lorenzo Berardinetti: So the performance bonds—I think you spoke to that already, and you don't think that's a useful—go ahead, sir.

Mr. Steven Hobbs: Yes, I would say that the exemption would just be as it relates to performance bonds. I think prompt payment and adjudication—the industry has absolutely no problem. It would just argue that the government needs to be part of that process, just given the unique nature of AFP projects.

Mr. Lorenzo Berardinetti: Okay. I understand.

Mr. Mark Romoff: And coming back to Mr. Yakabuski's point, sometimes government isn't as prompt as it should be, so if you bring the same regime to both the crown and the private sector, you'll end up with a process which I think works much more effectively.

The Chair (Mr. Monte McNaughton): Okay. That's all the time. Thank you very much for your presentation today.

Mr. John Yakabuski: Chair, if I may—

The Chair (Mr. Monte McNaughton): Mr. Yakabuski?

Mr. John Yakabuski: Where we need a modernization process is on this committee process here, so members of the committee could actually ask a question.

The Chair (Mr. Monte McNaughton): Thank you very much for your presentation.

Mr. Mark Romoff: Thank you, Mr. Chair. Let me just finish by saying that I'm happy to meet with anyone on this committee separately to explore these issues in more detail. It's important to all of us.

Thank you for your time, and thank you again for the invitation.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

The Chair (Mr. Monte McNaughton): We'll now call upon the Council of Ontario Construction Associations. Just a reminder: Presenters have up to 10 minutes, and the remaining time will be split equally between caucuses for questions. So if you'd state your name for Hansard, please, and begin with your presentation.

Mr. Ian Cunningham: Good afternoon, Chair. My name is Ian Cunningham, and I'm the president of the Council of Ontario Construction Associations, or COCA. With me today is Ted Dreyer. Ted is a construction lawyer with the firm Madorin, Snyder LLP, and he's chair of COCA's Construction Lien Act review task force.

COCA is a federation of 29 construction associations representing approximately 10,000 general and trade contractors operating in the ICI construction sector across Ontario.

First, we want to congratulate the government for initiating the process that led to the creation of Bill 142. In particular, I'd like to recognize Attorney General Naqvi for the strong leadership that he has shown on this file.

Bill 142 is the product of an 18-month review of the Construction Lien Act and of the chronic problem of delayed payments that's endemic throughout the construction industry. The study was conducted by Bruce Reynolds and Sharon Vogel and their 15-member expert panel. It was meticulous and thorough in every way and included extensive consultations with all stakeholders. The result of the Reynolds-Vogel study was a report titled Striking the Balance.

Most, if not all, stakeholders believe that Striking the Balance proposes a fair and reasonable balance point, or compromise, among all of their competing interests. No one stakeholder got everything that they wanted.

Bill 142 reflects the recommendations from Striking the Balance very well. It modernizes the outdated Construction Lien Act, introduces a payment regime and introduces a speedy adjudication process for the resolution of construction project disputes.

Bill 142 is a much more comprehensive piece of legislation than either of the two previous private members' bills that addressed only prompt payment, those being Bill 211 in 2011 and Bill 69 in 2014.

Following the introduction of Bill 142 on May 31, the Attorney General invited stakeholders to provide feedback on the bill itself, not to alter the policy direction but to look for gaps and unintended consequences.

COCA's July 31, 2017, letter to the Attorney General is attached to our submissions to the committee today.

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Also, following the introduction of the bill, Reynolds, Vogel and their expert panel were engaged by the ministry to review all the stakeholder feedback received at this stage and to work with legislative counsel at MAG to help draft amendments and regulations under the bill in the event that it is passed.

There are two more points I'd like to make with regard to the legislative course this bill has taken. First, on Monday evening of this week, the Attorney General informed stakeholders of the amendments that the government intends to propose during the clause-by clause phase of this committee's work. This is not a common step, but it is very helpful for stakeholders in providing advice to the committee. Secondly, I understand that your committee was briefed on the bill earlier today by Mr. Reynolds and Ms. Vogel. This briefing will no doubt contribute to much better-informed committee work.

There's a lot of history on this file. COCA has been lobbying for reform of the Construction Lien Act for more than 20 years and for prompt-payment legislation since 2011. Suffice it to say that Bill 142 is long overdue.

Now I'll turn it over to Ted for some comments.

Mr. Ted Dreyer: Thank you for the opportunity to speak. My first point will address the proposed amendments that were circulated earlier in the week. They weren't necessarily comprehensive in their scope, but from what we saw, we think they're generally beneficial. The concerns that we do have relate to a few amendments that we had proposed in our July 30 letter to the Ministry of the Attorney General that weren't included on the list of proposed amendments.

Our first point is that construction professionals should be able to act as adjudicators. The act creates an authorized nominating authority. The nominating authority will decide who can become an adjudicator. It is our expectation that members of self-governing bodies such as lawyers, engineers and architects will be qualified to act as adjudicators, and there's certainly a place for them in the system. In our view, however, it's important that construction professionals, meaning current and former tradesmen and contractors, also, if properly trained, have the opportunity to act as adjudicators.

In most construction disputes, the most important and key issues are factual rather than legal: Was the work done correctly? Is the contractor entitled to an extra? Is the amount being charged reasonable? In most cases, the best person to decide the disputes in the expedited format of an adjudication would be a construction professional with years of experience in the industry. We also believe that expanding the pool of potential adjudicators would also help keep the cost of adjudication under control.

The next point is that we'd like to see subsection 34(9) of the Construction Act deleted, to simplify the process for liening the common elements of a condominium corporation. Under the current act, a contractor who wants to register a claim for lien for work done on the common elements of a condominium corporation has to register a claim for lien against each and every unit in the condominium. In many cases, that involves hundreds of units.

The Reynolds-Vogel report recommended that the process for registering a claim for lien for work done on the common elements of a condominium corporation be simplified. Not only did Bill 142 not adopt that recommendation; it made the process more complicated. In addition to all the current steps in the process, the proposed subsection 34(9) of the Construction Act requires anyone claiming a lien against the common elements of a condominium corporation to give notice of the lien to each individual unit holder. In some cases that will, again, involve hundreds of units.

The existing system already imposes an economic burden upon lien claimants. In many cases, lien claimants

will choose not to enforce their lien rights because the cost of enforcement is greater than the amount in dispute. The proposed subsection 34(9) will make a bad situation worse. It should be amended.

Our last point that we'd like to see changed relates to subsection 87(1.1), which requires written notice of lien to be served in accordance with the rules of court. This is not something that was recommended by the Reynolds-Vogel report. Furthermore, it's not something that's responsive to the main criticism of written notice of lien, which was that it was often difficult to tell what was a written notice of lien and what wasn't.

We believe that this amendment would effectively eliminate the delivery of a written notice of lien as a fast and inexpensive remedy available to lien claimants to ensure payment. It is, in effect, a stealth repeal of written notices of lien. The Construction Act should permit written notice of lien to be served by any method that gives effective notice to the payer who receives it. Delivery by fax or email with a receipt would meet those criteria.

These are our submissions, Chair. We would be pleased to take any questions that you have.

The Chair (Mr. Monte McNaughton): Excellent. Thank you very much. We'll move to Mr. Mantha.

Mr. Michael Mantha: Ian, it has been a while. I haven't seen you in a long time. How are you doing?

Mr. Ian Cunningham: I'm well, sir.

Mr. Michael Mantha: Ian, this has been a long time coming, and a lot of work has gone into this. From COCA's perspective: Did you guys get everything that you were looking for in this whole process, and if there's anything missing, what's missing?

Mr. Ian Cunningham: I think I said in my comments that I give a whole lot of credit to Bruce Reynolds, Sharon Vogel and the experts that they pulled together. They had a team of 15 people that took written advice from every stakeholder possible on many, many occasions. They were very, very accessible. I don't think anybody got everything they wanted. As I said in my comments, they miraculously found a very delicate balancing point. I would say that most, if not all, stakeholders were supportive of their report. I think it is a very delicate compromise that they've found. It's kind of like a game of whack-a-mole, where you change one thing and other things will shift.

So we didn't get everything that we wanted and neither did every other stakeholder. Ted has recommended some very minor refinements. If, in the wisdom of the committee, they're going to upset the balance, then that's our loss, but it was a very delicate point of balance that they were able to find that almost all stakeholders agreed to, and nobody won everything.

Mr. Michael Mantha: Knowing that we've probably got about 30 seconds: Why do we need this act?

Mr. Ian Cunningham: I think that people who do work deserve to be paid for work that they've done, without dispute, if it has been certified and agreed upon, that it's completed according to spec. The act provides a speedy, rough justice for those parts that are under dispute, but people ought to get paid for the work that is not disputed.

The Chair (Mr. Monte McNaughton): We'll move to the government: Ms. Kiwala.

Ms. Sophie Kiwala: Thank you, Ian, for being here. Thank you as well, Ted, for your deposition today. I very much appreciate your words.

I just want to acknowledge you, Ian, for the incredible work that you've done over the past many years for COCA and the industry. As you know, my brother is in construction. I was in construction as well, and I know full well what the impact is when contractors don't get paid. They can't pay for the goods that they need in order to continue their job and they can't pay their staff. It's a monumental problem for the industry, and this is the industry that is building up the province of Ontario, so I'm glad that we're at this point today, and I bet you are as well.

Mr. Ian Cunningham: Often in a construction project chain, when the monies don't flow down through the project chain, it's often the people near or at the bottom of the chain, typically the smallest contractors, who are your constituents and your ratepayers, who are then required to take a second or third mortgage on their house to pay their people, pay the rent for their equipment and so on.

Ms. Sophie Kiwala: You're exactly right. When we come to these committees and we talk about legislation, sometimes we forget to talk about the people who really matter, who are doing the work, so I'm glad we've had the opportunity to pay homage to them. I think it's really important.

I also want to acknowledge Bruce Reynolds and Sharon Vogel for their incredible, encompassing work that they've done. They did indeed strike a very fine balance.

Just very quickly: As my colleague Mr. Yakabuski said, we don't have a lot of time for questions, but I do want to just ask if you can add anything in addition to what you've already said about how adjudication would help enforce prompt payment.

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Mr. Ian Cunningham: The adjudication that's laid out in the bill is a form of what I think everybody agrees is a speedy, kind of rough justice. It may not be 100%; even the court processes don't deliver 100% perfect justice. But it's something that a construction professional or an adjudication professional—

The Chair (Mr. Monte McNaughton): Thanks, Mr. Cunningham. We have to move to the official opposition and Mr. Yakabuski.

Mr. John Yakabuski: Thank you, Ian and Ted, for joining us. I appreciate all the work that you've done over the years. You spent most of your day here yesterday; I hope you found a cot here somewhere so you didn't have to travel too far to come back today.

We're all happy that we're here at this point today, because in my 14 years here, this has been an issue that

has been discussed for all of them. On the changes recommended—I don't know what the bill is calling for with regard to the makeup of this board or whatever, the adjudicators, but I completely agree.

There's an old saying: If you didn't play the game, you shouldn't make the rules. I think we would be cheating ourselves if we have an adjudication process that does not include people with decades of experience in a field that they're adjudicating on. Who better to understand whether the work was done at a quality level than someone who did that work for many, many years?

Is your anticipation or your expectation that those people are not going be on the board of adjudicators or whatever we're calling it here?

Mr. Ted Dreyer: In fairness, the bill doesn't speak to who will be permitted to act as an adjudicator. In our view, it's important that construction professionals have that opportunity, but no one has suggested otherwise.

Mr. John Yakabuski: So there's nothing in the bill that dictates who is going to be on the board.

Mr. Ted Dreyer: No.

Mr. John Yakabuski: It's a pre-emptive strike, so to speak.

Mr. Ted Dreyer: Yes.

Mr. John Yakabuski: It's a pre-emptive strike. I certainly agree with you and I would hope that the board would be comprised of, yes, the proper people who are experienced in adjudication, but also relying on that tremendous value of experience that can be garnered from people who have spent their lives in the very fields that they're going to be adjudicating on. I hope you are successful in that regard.

Mr. Ian Cunningham: There will be all kinds of different disputes over different issues, and you will want a varied and diverse pool of individuals from construction who can be—

The Chair (Mr. Monte McNaughton): Mr. Cunningham, thank you very much. That's it for questions. Thanks for your presentation today.

Mr. Ian Cunningham: Thank you, Chair. Thanks so much for your time today.

PROMPT PAYMENT ONTARIO

The Chair (Mr. Monte McNaughton): I'd like to now call upon Prompt Payment Ontario. Good afternoon.

Mr. Ron Johnson: Hi, there.

The Chair (Mr. Monte McNaughton): You have up to 10 minutes for your presentation. Questions this time will begin with the government. If you would state your name for Hansard and then begin with your presentation.

Mr. Ron Johnson: My name is Ron Johnson. I'm with the Interior Systems Contractors Association of Ontario.

Ms. Sandra Skivsky: Sandra Skivsky from the Ontario Masonry Contractors' Association, representing Prompt Payment Ontario.

Mr. Geza Banfai: My name is Geza Banfai. I'm counsel at the law firm of McMillan LLP in Toronto, and I counsel Prompt Payment Ontario.

Mr. Ron Johnson: We want to first thank the committee for hearing our submission. As you know, it has been a long road to get to this point. Prompt Payment Ontario represents some unions within the province of Ontario, a number of employer associations, health and welfare, and pension benefit administrators, as well as suppliers. We represent literally thousands of employers within the construction sector and well over half a million workers within the construction sector in the province.

We came together for the sole purpose, quite frankly, of obtaining prompt-payment legislation in the province. Most other jurisdictions, as a lot of you know, have prompt payment already and have had it for years. The European Union, the United States of America, Australia and New Zealand have all agreed that a legislated solution was what was required.

We embarked on this task of getting prompt payment in the province. It started with Dave Levac in 2011 introducing a private member's bill, and Steven Del Duca in 2014. That led to the retention of Ms. Vogel and Mr. Reynolds. They have done an outstanding job, quite frankly, in consulting with the industry.

We support Bill 142 in its entirety. Again, it does strike that balance. We believe that not everybody got what they wanted; we know that. But at the end of the day, it was a balance that was struck.

I'm going to turn it over to Sandra for a few remarks.

Ms. Sandra Skivsky: Thank you so much. As Ron was saying, this is a very complex piece of legislation. It's like an intricately woven piece of fabric. You pull a thread at one end, and you're going to get unravelling at the other end through a series of unintended consequences.

One of my first comments is for a great deal of caution as people present their individual amendments. There has been a process over the summer where these amendments have flowed through and have gone through a review and an amalgamation and considered in the totality of the bill. That is a critical aspect of getting this bill right. Everyone has got their favourite point that they want to bring up—that they did get this. So I want to stress that PPO doesn't support the principle of this bill; we support this bill.

Secondly, I would urge that, when it comes time to proclaim this bill, it gets proclaimed in its entirety. It's like a three-piece harmony: There are three parts to it, and you cannot work with one part and not have the other two in play. For the industry to undertake the immense education effort that it's going to take to get all of the stakeholders up to speed, we need a date. We need to know that the whole bill is going to be in play and not just parts of it. So it's extremely important that, when it comes time to proclaim this bill, it is in its entirety.

In terms of getting what everybody wanted—I'm an economist by background, so I geek out every once in a while. We have reached what I call Pareto optimality, where you cannot reallocate the resources or the benefits in any way that one person benefits without another person losing. We got there through an extremely thor-

ough, transparent and welcoming process, where everybody got a chance to say what they had to say about this. "Striking the Balance" was a very apt title.

The last thing that I just want to say is that there's going to be a lot of talk. When I hear people talk about prompt payment and some of these aspects, they talk at a very high level. I've been working on this for 10 years. I have to boil things down to a very simple place for myself. This is about doing the right thing. This is ensuring that small and medium-sized businesses get paid for proper work so they can pay their employees, so they can hire people and so they can pay the health and welfare plans so those people can support their families.

There are a lot of things—maybe a tweak here. People talk about risk. Risk flows down and it ends up at the feet of the people who are least able to carry it.

So when you consider all of the things in front of you, just remember that it's about doing the right thing.

The Chair (Mr. Monte McNaughton): Great. Thank you very much. We have lots of time this time for questions and, hopefully, answers. We'll move to Ms. Mangat.

Mrs. Amrit Mangat: Thank you, Ron, Sandra and Geza, for your presentation. My understanding is that you have been a strong advocate for this bill. As you said, Ron, in your presentation, you have been advocating for several years. Can you tell us for how many years your organization has been advocating for this legislation?

Mr. Ron Johnson: You have to back, actually, quite some time, even before I embarked on this industry some 12 years ago. The industry has been lobbying and working to get meaningful lien act reform for well over two decades, and we've never really been able to achieve that until now.

Prompt Payment Ontario was developed right around 2014, when Steven Del Duca introduced his private member's bill. It has been very active ever since and has grown, quite frankly, with more and more stakeholders joining Prompt Payment Ontario. Quite frankly, when this bill is passed, that will be the end of Prompt Payment Ontario. It was only a one-issue organization.

It has been quite some time since we've been working at this. I've been at it for about a dozen years; Sandra, for about the same; and Geza, probably much longer in his law practice in terms of getting some lien act reform. So it's been quite some time.

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Mrs. Amrit Mangat: Okay. Thank you. So how would the bill improve the payment process for your members?

Ms. Sandra Skivsky: Well, for one thing, with the proper invoice triggering a payment timeline, they get to know when they can expect their money. Right now, they don't. They can submit an invoice and it can sit there for 30 days, 90 days, six months. We had a contractor down here yesterday waiting 18 months for payment on a hospital. And the work is approved. It's all good—just no money.

It gives you a timeline. It gives you a transparent framework within which they have to make business decisions. If that timeline runs out, you have recourse through the adjudication process, and if the adjudicated decision is not followed, a trade contractor has the right to suspend or terminate work. Right now, they don't get paid, and if they suspend or terminate, they're in breach of contract. They could lose their house, their business and everything else.

Mrs. Amrit Mangat: Okay. You spoke about adjudication. How would adjudication help enforce prompt payment?

Ms. Sandra Skivsky: For starters, there is a review process. There is an objective third party that is going to look at what the issues are. It's not a trade contractor fighting with a—there's a power imbalance in the industry. I mean, we've talked about this a lot. It's a lot more difficult for a trade contractor to go argue about where his money is and why he's not getting it.

This goes to a third party, an objective person who's going to make a decision. That power to walk off and not keep working while you're not getting paid is very important. Geza might add to that.

The Chair (Mr. Monte McNaughton): Actually, we have to move to the official opposition and Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much for joining us this afternoon. Ron, the first time you came to speak to me about this issue, I was—call me naive, but don't say it in public. I was absolutely flabbergasted that there could be a possibility of requiring this kind of legislation that somebody should pay the bill that they've been presented with. I guess I'm old school or I come from a different part of the world, but I'm telling you, I was shocked that we would have this kind of a problem.

Now the more I understand about how the industry works and the domino effects of all of the things that go on—and then my son is working in the industry—I understand why it was necessary and appreciate the work that you've done.

I also understand now, when I look at the back of this bill and I look at the proclamation section, what you're talking about; I mean, talk about a cornucopia of dates. There are more here than there are special holidays proclaimed by the Liberals here in the Legislature. Every time you turn around, it's a special day. Well, we've got a different day for every section of this bill, and all at the proclamation of the Lieutenant Governor. So I understand what you're talking about there.

One of the things we've heard in the bill is how—when you and I talked about it, it was about the subcontractors, because they were the bottom of the feeding chain. The owner is at the top. What we've heard more about as this bill has been introduced and talked about is how all components of that hierarchy have to be part of this. Do you support what we're hearing from contractors, where you can't put the contractors in a vise if you're not putting the owners in a bigger vise, because they're the biggest component of this thing that starts to

go topsy-turvy when one part doesn't work? Do you support that part of it as well?

Mr. Ron Johnson: For sure. I think it is critical that all parts of the construction chain adhere to the act. I think that's critical.

When you said that you were surprised about slow payment, the odd thing is—and you mentioned it earlier, Mr. Yakabuski—that governments, quite frankly, are some of the worst offenders of slow payment. We're quite pleased, actually, that all levels of government—school boards, whatnot—are all going to be included in the prompt-payment legislation.

I know that there has been some opposition from some public entities that don't want to be included, but quite frankly, it's critical that they are. Taxpayers aren't getting a bang for their buck when it comes to infrastructure spending because contractors have to build contingency carrying costs and financing costs into their bids, and so taxpayers really aren't getting what they deserve in terms of cost effectiveness in construction.

Mr. John Yakabuski: We had to work at night to do our accounts payable. Maybe the government is going to work harder to pay theirs.

Mr. Ron Johnson: Well, we'll see. I figure if they can pay their bills in Alabama in seven days, they can do it here in 30.

Mr. John Yakabuski: If they took six weeks to pay their staff, they wouldn't have staff, right?

The Chair (Mr. Monte McNaughton): Thank you very much. We'll move to Mr. Mantha.

Mr. Michael Mantha: Mr. Banfai, you were just about to answer the question, or add to the question, that Mrs. Mangat was asking. I want to give you that opportunity to give us that information.

Mr. Geza Banfai: I was just going to reinforce the point—and it came up before via the honourable member at the end—and it's the importance of looking at this legislation as an integrated whole. The question posed was: How is adjudication going to help prompt payment? Adjudication makes prompt payment work. Presently, a party who is not paid anything has the right to take legal remedies. You can file a lien if you have lien rights or, in any event, you can sue them in court.

The problem with the court system, generally, is that it's extremely slow, as in years slow. The essence of an adjudicative remedy, rough and ready though it be, is that it eliminates that delay. You get a decision in 30 days. I don't know if the point has yet been made before this committee by anybody else, but the anecdotal evidence, for example, from the United Kingdom, where this system has been in place for about 20 years, is that it works very, very well. Over 90% of adjudicators' decisions in the UK are never challenged—

Mr. Michael Mantha: Most of the contractors in my area are small in nature, as we talked about: real families, real people, 20 or 30 people that they're hiring. Having this in place will provide them with an opportunity to bid on more contracts. As there is a trickle-down effect, there's a trickle-up effect, which may make projects actually less expensive because there are more that are bidding on them. How do you see this benefiting them?

Ms. Sandra Skivsky: Benefiting the—

Mr. Michael Mantha: Benefiting the contractor. How do you see this legislation being—

Ms. Sandra Skivsky: Oh my God, if you know what your cash flow is, you can invest in your business; you can hire apprentices. The government has done a wonderful job in supporting apprenticeship, but at the end of the day it's the trade contractors that hire the majority of those people. They can't hire them if they don't know when they're going to get paid. They can take on new people. They can make all of their pension and health and welfare payments on time and not go into delinquencies. You'll hear from some of our union partners further down the road and they can tell you all about that.

They can bid on more jobs, and they don't have to put in a contingency for having to finance the jobs. Isn't it ridiculous that the smallest player in the construction chain is actually financing a good chunk of a project?

The Chair (Mr. Monte McNaughton): Okay, thank you. Excellent. Right on time. Thank you very much for your presentation today.

Ms. Sandra Skivsky: Thank you.

CITY OF TORONTO

The Chair (Mr. Monte McNaughton): Now I'd like to call upon the city of Toronto. Good afternoon. You will have up to 10 minutes for your presentation. If you would state your name for Hansard. Questions will begin with the official opposition.

Ms. Wendy Walberg: Good afternoon. My name is Wendy Walberg and I am the city solicitor for the city of Toronto. With me is Michael D'Andrea, the chief engineer for the city, and executive director of the engineering and construction services division at the city. Also with me is Tanya Litzenberger, a senior construction lawyer with the city.

As you know, the city of Toronto is one of the largest owners of construction projects in Ontario. Our divisions, agencies and corporations collectively spend about $3.3 billion per year on approximately 5,000 projects. Our projects are extremely diverse and range in value from a few thousand dollars to hundreds of millions of dollars. This includes everything from repairing potholes in roads to a complete reconstruction of roads; from renovating buildings to upgrading sewer and water treatment plants; from repairing water main breaks to constructing critical sewer infrastructure in rock tunnels located 50 metres beneath the surface of the city.

We are also about to embark on a complex and unique project of critical importance to the city, which is the rehabilitation of the Gardiner Expressway with a planned expenditure of an estimated $2.4 billion in the next 10 years.

As a public sector body responsible for stewardship of public funds, we have a duty to be diligent in how we manage our projects, to ensure that taxpayer money is

only paid for work that is properly performed and meets all of the specifications under a contract. We also have to ensure that there are checks and balances in processing those payments. Our priority in reviewing Bill 142 is to protect the public purse.

1350

The city recognizes the need for the Construction Lien Act to be updated. We have been pleased with the amount of consultation that has taken place over the last three years, particularly through the Construction Lien Act Review and also the opportunity to make submissions and participate in consultation with the Ministry of the Attorney General.

The city was opposed to Bill 69, the Prompt Payment Act, because of its untenable requirements. However, the city was then and is today a supporter of prompt payment in the construction industry. We are here today to encourage changes so that we have balanced legislation to get there.

There is much to support in Bill 142; however, in the interests of limited time we will only be highlighting a few things. We will focus on our concerns regarding operational impacts of the bill. Our submissions take into consideration the proposed government motions circulated on October 23, and we are therefore not commenting on issues that we anticipate will be resolved. Our written submissions will be much more comprehensive on all of our concerns, including some not mentioned today. I will now take an opportunity to highlight some of our concerns.

First, the city requests that it and other stakeholders be given a meaningful opportunity to review and comment on regulations before they are finalized.

We also ask that there be sufficient time before parts of the act come into force so that we may make the necessary organizational and process changes to comply with the amendments, such as redrafting all of our construction contracts; developing new project management procedures; changing processes to ensure faster payment; developing training modules and training staff; planning for the potential hiring of new staff, particularly to assist with adjudication; establishing a system for the city clerk to manage lien claims and to recover costs; and drafting new clauses for leases with regard to landlord obligations.

Significant time will be required to adjust the city's internal systems and processes to comply with the proposed changes. For that reason, we request transition provisions that provide delay in the coming into force of certain portions of the act. For example, we request a two-year year delay for the parts on prompt payment and adjudication, a two-year delay until all liens against municipalities must be given to the Clerk instead of registered against the lands, and at least a one-year delay for all of the other amendments.

Aside from these requests, the prompt payment and adjudication parts of the act cause additional concern for the city. The timelines for payment are too short, allowing little time for owners and contractors to try to resolve any disputes before being pulled into the adjudication process. Also, although we recognize the importance that lien rights have had in Ontario, we are very concerned about combining lien rights and adjudication. The adjudication model is based on a system in the United Kingdom where there are no lien rights.

Under Bill 142, contractors and subcontractors can initiate a claim through adjudication, but if they are unsuccessful, they can also bring the same claim as a lien action in court the very next day. An owner, on the other hand, who is unsuccessful in adjudication cannot bring a claim in court until the end of the project. This, to us, seems unbalanced.

Separately, we are worried about being subject to what could be referred to as "trial by ambush" in adjudication due to the very short timelines and the experiences we have heard about from the United Kingdom; for example, when a contractor has spent significant time preparing a detailed claim, unbeknownst to the owner, and then initiates adjudication with the owner having very little time to prepare a proper response.

Moving on from adjudication, the city recommends that there be a ministry website for construction in Ontario for the publication of all notices under the act and to provide additional information on individual projects. This would be helpful to all parties in the construction pyramid and ease the administrative and cost burden of publications required under the act. If each project in the province was assigned a project identifier number, this would further assist the parties in locating all of the information about a project in one place on one website.

I will now list some specific requests that will be elaborated on in our written submissions.

First, owners should have more than 10 days to make a payment following an adjudicator's determination. This is important, given the serious consequence of work stoppage if a payment is late.

Phased holdback release should be permitted on all types of contracts, including unit-priced contracts, based on estimated value.

The requirement for surety bonds should be removed from the legislation.

We ask that certification of invoices be required before payment. This is still a significant issue for the city, despite the proposed government motion to permit "testing and commissioning" before a proper invoice is submitted.

Owners should be allowed the full 28 days to provide a notice of non-payment if a deficiency is discovered before that payment is due. This avoids an owner being forced to pay the full amount, even if they have discovered a deficiency.

We ask that owners be permitted to set-off for debts, claims or damages "whether or not related" to the project, as provided for in the current Construction Lien Act. We ask that they not be restricted to just those debts, claims or damages only "related" to the project.

The interest rate should be tied to bank prime or something similar, rather than to the Courts of Justice Act rate, which is updated only quarterly. If the matter

ends up in court, we also ask that the court be given discretion to vary the interest rate.

Bill 142 should allow for the designation of who the "owner" is on municipal and provincial projects. This would make it easier for lien claimants to preserve liens and also prevent private lands from being liened.

Parties should be permitted to agree on an adjudicator after the contract is entered into, but prior to any dispute arising. This is particularly important for complex projects like some in the city of Toronto.

Finally, an independent certifier should be permitted to be the adjudicator on all projects, perhaps with a financial threshold and where the independent certifier is also an adjudicator.

We do have further comments, which will be elaborated on in our written submissions. We thank you for your time and would be happy to answer any questions that you have.

The Chair (Mr. Monte McNaughton): Excellent. Each caucus will have a minute and 40 seconds. We'll start with Mr. Yakabuski.

Mr. John Yakabuski: Wendy, boy, that was a lot of stuff. I'd need a team of Philadelphia lawyers just to cipher that out. You covered a lot of things, and we don't have a written submission from you, which you indicated that you've intended to present to the committee. Maybe you should just write a new act. Sometimes, I'm cheeky; just forgive me for that.

But agreeing on an adjudicator at the start of the project, not when it comes to a time of a dispute? The length of the time that it takes for some of these jobs in Toronto to take place, two adjudicators could have died in that length of time. I've watched some of the construction in this city. I think it's better to have them once you have a problem.

Anyway, I really don't have direct questions, because you just covered so many things. It's impossible for me to single them out. God, it sure looks like the city of Toronto—you say that you like that prompt-payment act, but you found a million problems with it. God, do you really want to pay these people on time, or do you want the big fish to keep eating the small fish? You can tell me that offline, if you want.

The Chair (Mr. Monte McNaughton): We'll move to Mr. Mantha.

Mr. Michael Mantha: That kind of leads into my question. The city of Toronto has their own prompt-payment rules, right? You've been using them; you've developed them. How have they benefited you, as far as your construction or infrastructure projects, as a city?

Mr. Michael D'Andrea: Maybe I'll just comment on that. We have made some significant changes, as you alluded to, within our shop. My group delivers in the order of a half of a billion dollars in construction projects a year. Over the course of the last couple of years, we made significant process improvements in terms of how we process payments.

We do a pretty good job. There are other hurdles that we need to overcome, certainly if the act comes into place in its current form, that sort of cut across the entire organization, but we're in pretty good shape.

1400

Mr. Michael Mantha: Are there some strong points from what the act is going to do that you would be able to implement into your rules that you have right now that would benefit and enhance them? Are your rules something that you might want to suggest as an amendment to what is being proposed in this legislation?

Mr. Michael D'Andrea: I think maybe the only comment that I want to make is that the rules we have put in place are procedural rules or administrative, if you will, to expedite the processing of payments. Though, one aspect that we do still have some concerns with, as the city solicitor has pointed out, is with respect to the certification of invoices where we do require some time. In some of our complex projects there is a fair amount of time required to ensure that the work as stated by the contractor has indeed been completed. So in that regard, we need more time than what the act provides for.

Mr. Michael Mantha: Okay. Thank you.

The Chair (Mr. Monte McNaughton): Perfect timing. Ms. Wong?

Ms. Soo Wong: Thank you for your presentation. I'm looking forward to receiving your written submission.

With this new piece of legislation, if passed, would that mean that the lien will no longer be registered on municipal lands—just so people understand—

Ms. Tanya Litzenberger: Correct.

Ms. Soo Wong: So it means that it would be not registered. Can you share with us, because you share the complexity of the city of Toronto—we're not just focused on the city of Toronto, even though I'm a Toronto member—in terms of the impact of all the other municipalities too, because we have 444 municipalities across the province. How would you share that expertise with us about the municipalities?

Ms. Tanya Litzenberger: We actually have an informal owners group. There are a lot of members from various municipalities that participate in that. We've talked about this issue quite a bit, because the city of Toronto and Mississauga and Halton and Peel—they're all quite similar, but then there are a lot of small municipalities. Sometimes, the sense that I've gotten from various individuals is that, in the smaller municipalities, it's not as big of an issue because there aren't as many projects, and the actual physical location of the municipal clerk and the lawyer or lawyers might be on the same floor, or the next desk—that type of thing. The city of Toronto: The city clerk is at city hall, legal sits at Metro Hall, and there are 5,000 projects across the corporation. So we just actually need to be able to implement a system for the city of Toronto, and it may be a different system than what other municipalities will have.

Ms. Soo Wong: Okay. I know time is of the essence—

The Chair (Mr. Monte McNaughton): One second.

Ms. Soo Wong: Okay—

The Chair (Mr. Monte McNaughton): One second's up. Thanks, Ms. Wong. That's all the time we have.

Thank you very much for your presentation today.

Mr. John Yakabuski: That one second—that was just teasing you.

The Chair (Mr. Monte McNaughton): That was one second, yes.

TORONTO TRANSIT COMMISSION

The Chair (Mr. Monte McNaughton): I'd now like to call upon the Toronto Transit Commission. Good afternoon. You'll have 10 minutes for your presentation. Questions this time will begin with the third party. Go ahead.

Ms. Samantha Ambrozy: Good afternoon. My name is Samantha Ambrozy. I am a solicitor at the Toronto Transit Commission. I'd like to thank the committee for hearing us today. We'd also like to thank the Attorney General, as well as Bruce Reynolds and Sharon Vogel, for the opportunity to participate in the consultative process that actually brought us to today.

The TTC is a local board of the city of Toronto, but it's also a significant buyer of construction in Ontario. In 2017 alone, TTC has budgeted construction work of half a billion dollars. TTC supports a lot of the proposed changes that are in the Construction Lien Act, but in the interest of time, we're really going to focus on things that are concerning us today, in particular, on modernization, prompt payment and adjudication. Our written submissions contain a lot of detail on those parts. I'm going apologize in advance for using some jargon today, because it's an incredibly technical act and what we've learned in reading it is that the devil really is in the details.

Municipal liens: As the city mentioned, TTC is a strong proponent of having the liens actually given instead of registered on lands, as it currently is, but that doesn't quite go far enough. We're proposing that—

Interjections.

The Chair (Mr. Monte McNaughton): Sorry, could I ask people having conversations to take them outside, please?

I'll give you more time, to make up. Continue.

Ms. Samantha Ambrozy: TTC submits that a municipality or a crown, actually, should be allowed to publish a notice that identifies itself as the owner that's maintaining the holdback. You may ask, why is that necessary? Well, there are lots of cases where there might be many valid owners on a project, but only one is maintaining the holdbacks. For example, on TTC's Spadina subway extension, TTC is the only owner that is maintaining tens of millions of dollars in holdback, but almost all liens have been both registered and delivered. When I say "delivered," they've been delivered to the TTC, city of Toronto, Infrastructure Ontario, Metrolinx, Downsview Park, York University and dozens of private homeowners and businesses whose properties happen to be part of the project, even if just temporarily.

Bill 142 goes some of the way to address those problems but it doesn't go the whole way. If TTC's owner declaration solution were effected, all those landowners that don't have holdback obligations wouldn't have to deal with any liens. It would unburden the city clerk from having to deal with all the local board liens, and it would ensure that the local board can comply with our notice obligations immediately as they arise and not wait for the liens to get delivered from the clerk themselves. And it would only be permissible so that if you didn't have this declaration, the default on the city delivery could happen.

I think lien claimants are going to like this solution because rather than all the liens delivered to all the parties, like they're doing now, they would only have to deliver one lien to one party. All the TTC is asking for is the ability to put up our hand and say, "I'm the one with the holdback; give me all your liens."

Annual and phased release of holdback: TTC is strongly supportive of allowing this for an early release, but as written, it's a little too restrictive. It requires it to be contracts at a threshold amount of money, and that that threshold be at the time the contract is entered into, which means it would be unavailable on contracts for time and materials or unit price basis, or contracts where a change is issued halfway through that would bring it up to that threshold. Even if, in all those situations—because of those, it makes sense to do phased release. It is recognized that it had to be changed for design contracts, but we submit that it is equally applicable in the construction context.

Prompt payment and the trigger event: TTC is really concerned about the prohibition of certification or owner's approval for a proper invoice. The reason is that parts of an invoice often require owner's approval or certification. The Attorney General has indicated that testing and commissioning are going to be included, but those are only two items. For example, TTC invoices often include labour and material payment logs that are approved daily onsite, or cost breakdown analyses that have been reviewed with the contractor and gone through levels of TTC approval. It's the approved one that is included with the invoice.

There are certificates for WSIB clearance, there are insurance certificates, and then there are certificates of publication for the certificate of substantial performance. You will see that there's a lot of certification involved there.

To ensure that all the component parts of an invoice are allowed to be included in a proper invoice, we really believe that that prohibition language that doesn't allow approval or certification needs to be removed.

Payment lags: This is going to get a little hairy.

Mr. John Yakabuski: It already has.

Ms. Samantha Ambrozy: I know. The devil really is in the details in this act.

I actually agree with what Prompt Payment said: that when you pull a string on one side, it comes on the other side, and unfortunately, it makes it a little more complicated.

Under prompt payment, there are time lags between the deadline an owner has to publish a notice of nonpayment and the date the payment has to be made. So for

progress payments, an owner has to provide the non-payment notice 14 days before it has to make that payment. For a holdback, it's 21 days between the notice and the date of payment, which means for any deficiency or defect discovered in that lag period, you're not allowed to reduce the payment.

TTC submits that you should be allowed to publish or provide that notice right up until the date of payment. If that were allowed on progress payments, there would be no risk to the contractor. The only change would be when they find out how much they're going to get paid. There is no change in the payment date and there are no liens expiring, but the owner would be ensured that it only pays for proper complete work.

On the holdback side, there would also be no change in the payment date, but TTC admits that liens would expire. But the way the new act is structured, there are a lot more protections built in.

I'm going to set up an example under the bill as it's currently drafted: If an owner discovers a defect three days before the payment is due, it still has to pay 100% of that holdback down, even if the work isn't proper and even if the contractor and subcontractor agree about the defect. If the amendment would be allowed, and the non-payment notice was published on that day, yes, there would be lien rights lost. That's true.

Mr. John Yakabuski: Yes, there would be what?

Ms. Samantha Ambrozy: Lien rights would be lost.

Mr. John Yakabuski: Lien rights would be lost.

Ms. Samantha Ambrozy: But a contractor would be obligated to pay the sub for that work or commence an adjudication. If they win the adjudication, they then get interest if the decision was wrong. Arguably, this is a faster resolution than the lien itself this lag is trying to protect.

The point is, Bill 142 provides subcontractors with significant protections even when lien rights are lost, but the owner, on the other hand, is left to pay for defective work even when all parties agree it's defective. That doesn't seem balanced to us.

It should also be remembered that this act doesn't apply only to large infrastructure projects; it applies to bathroom renovations and kitchen additions. Why should a homeowner be put at risk because they happen to find a contractor's error on day 20?

1410

I'm now going to move to adjudication. TTC has serious concerns about how the lien system and adjudication are going to work simultaneously. It currently allows for liens and adjudications on the same matter, but there is no requirement that the lien be discharged prior to payment of an adjudication determination, and there's no allowance for an adjudicator to make that kind of order. What might happen is that there is an adjudication decision that has to be paid within 10 days, and at the same time an owner is obligated to retain notice holdback for the same issue. And that's only if the adjudication and lien issues line up perfectly. The way these things are processed, there is a very low likelihood that they'll actually be for the exact same matter.

In the UK, Ireland, Hong Kong and Singapore, where there is adjudication, there is no lien legislation. In parts of Australia and New Zealand, they repealed their lien legislation in advance of adjudication. Another Ontario construction expert recommended that lien rights be suspended during the project in favour of adjudication. If Bill 142 is going to permit both systems to exist, we think it should be fairly.

Smash-and-grab: There is a very real concern that adjudication is actually going to be litigation by ambush. The UK actually has a term for this; they call it smash-and-grab. It's when a party that commences the adjudication has as much time as it wants to prepare its claim, but the responding party only has what the adjudicator is willing to give it, and it still has to be decided within the 42-day deadline.

For complex disputes like significant delay claims, adjudication is an inappropriate forum. The UK actually recognizes it by recommending that an adjudicator resign in the event that they believe they're going to be unable to decide the issue fairly in the time frame.

In 2016, the UK Adjudication Society reported that several adjudicators are noting an increase in smash-and-grab adjudications and that lawyers have now overtaken quantity surveyors as the most common type of adjudicator, indicating more legally complex disputes. It's a very real issue in the UK, where they have had adjudication for 20 years.

For adjudication generally, TTC is also concerned that on long projects, interim binding decisions are going to become de facto binding decisions due to the operation of a two-year limitation period. It's not clear under the current bill if an adjudicator will be required to apply limitations law to find that a claim might be statute-barred if it arose in year 1 but isn't adjudicated until year 5. Then the question is also: Will a court be allowed to hear it if it's litigated in year 6? None of those questions have been answered yet.

TTC also submits that an adjudication determination should be treated just like a progress payment. An owner should have as much time to process it as it's entitled to process a progress payment. It should be subject to notice holdback obligations, set-off and non-payment notices.

Additionally, TTC has a general concern about whether the purpose of adjudication will actually be achieved. If the purported benefits are to unlock gridlock and allow funds to flow, the UK has reported that the majority of the adjudications it sees are coming after substantial completion.

Adjudication is going to increase project budgets. Owners are going to have to have more staff to deal with potential adjudications and then actually respond to adjudications as they come up during the course of a project. It's going to require investment in resources and technology to deal with quick turnaround times and, of course, pay for fees of adjudicators.

But the principles that underline adjudication are that the need to have a right answer is subordinated to the need to have a quick answer—

The Chair (Mr. Monte McNaughton): Thank you very much. We're going to move to Mr. Mantha for a minute and 40 seconds.

Mr. Michael Mantha: My goodness. You offered a show. Do you need a glass of water?

Ms. Samantha Ambrozy: I'm okay.

Mr. Michael Mantha: All right, well, you've got a minute and 40 seconds left. Finish.

Ms. Samantha Ambrozy: If the UK adjudication experience is that it doesn't reduce gridlock and it accepts decisions that are wrong, TTC really questions whether the increase in costs and payment of wrong determinations are going to justify the utility of the adjudication scheme as proposed.

Lastly, I'd like to talk about the False Claims Act. When I listened to second reading debate, I heard a lot of people saying that if the US has had prompt payment for so long and the UK has had adjudication for so long, how come it took so long to come to Ontario? Well, the US has had a False Claims Act since 1863. It was enacted during the Civil War. Many individual states have followed suit. The Charbonneau commission investigating the Quebec construction industry recommended the enactment of a similar act.

The US False Claims Act provides penalties when somebody makes a false claim for money to the US government. It applies to contracts with the government and those that receive federal funding. While the US False Claims Act doesn't only deal with construction, it recovered $4.7 billion in 2016 alone. When it was applied to the construction industry, it was used when change orders were inflated, when a supplier failed to perform quality assurance measures, for inflated labour rates and for bid-rigging.

When contractors in Ontario are requesting that payments be made more swiftly and that disputes are resolved more quickly, there's less time for owners to scrutinize the payments and to respond to adjudications. A false claims act would provide an additional check and better protect taxpayers' money. If we're already importing UK adjudication and US prompt payment, false claims should also follow—

The Chair (Mr. Monte McNaughton): Thank you very much. We'll move to the government. Mr. Berardinetti.

Ms. Samantha Ambrozy: Sorry for speaking so fast.

Mr. Lorenzo Berardinetti: Is your whole presentation in this pamphlet here?

Ms. Samantha Ambrozy: And then a lot more is in there too, but yes.

Mr. Lorenzo Berardinetti: Okay, thank you. Homework for tonight.

Just a quick question: Municipalities under this new legislation would be exempt from a lien.

Ms. Samantha Ambrozy: They wouldn't be exempt from liens. They would just be preserved in a different way. They would be given in paper rather than registered against the lands.

Mr. Lorenzo Berardinetti: But they won't be registered against the city, though, or against—I'm not sure—

Ms. Samantha Ambrozy: The TTC is a municipality under the act, yes.

Mr. Lorenzo Berardinetti: They'll be exempt, won't they?

Ms. Samantha Ambrozy: We will still have holdback obligations and we will still have liens; they will just be given to us in a different way so the actual title to the land won't be held up.

Mr. Lorenzo Berardinetti: Okay. I thought they wouldn't be registered on your properties.

Would this legislation impact the way that you operate with Toronto? Basically, Toronto and the TTC work a lot with each other. Would that affect the TTC's ability to work with the city at all?

Ms. Samantha Ambrozy: In part of the first presentation, I talked about designation of an owner. Currently, when a lien is given to a municipality under the bill, it has to go through the city clerk, which would mean the city of Toronto clerk would be collecting all the liens for the police services board, the library services board and the Toronto Transit Commission. When I'm proposing a declaration of the owner who has the holdback, I would ensure that the liens come directly to the Toronto Transit Commission instead of having to be routed through the city clerk. That's where this new act deals with the relationship between the city and its local boards.

Mr. Lorenzo Berardinetti: We just have five or 10 seconds. Were you involved in the consultation—

The Chair (Mr. Monte McNaughton): Sorry, Mr. Berardinetti. That's the minute—

Mr. Lorenzo Berardinetti: I just wanted to ask about the consultation process.

The Chair (Mr. Monte McNaughton): Is it Mr. Yakabuski or Mr. Bailey? Mr. Yakabuski.

Mr. John Yakabuski: Thank you for your presentation. It was very easy to understand.

Just a couple of things: Your comment about a single lienholder—or whatever you called it, however you termed it: On the face of it, that makes sense, rather than having 75 parties to an action. Having one party to an action versus other parties kind of makes sense to me—just valley justice.

I will tell you one thing: I'm not sure what kind of jobs I might be applying for in the next few years—because you never know how this one is going to work out—but an adjudicator in this bill is not going to be one of them, I swear to God on that. I don't want to have anything to do with it.

On the false claims act, do you not have—when you talked about the false claims act in the United States or whatever, if a job is done and paid for and then you determine that under investigation there was inferior material, it was covered up—the Charbonneau Commission found out about that, crappy cement or whatever. Do you not have, today, the right to initiate litigation against whoever would have been the contractor or the builder or whatever the case may be? You have remedy today, do you not?

Ms. Samantha Ambrozy: We have remedy in the form of civil action, where you have to prove default and then damages. The difference with a false claims act is that it's quasi-criminal, in that even if I didn't suffer any damages, a penalty would be applied, so that would have a deterrent effect. It also has some—

The Chair (Mr. Monte McNaughton): I'm sorry to cut you off. That's all the time.

Ms. Samantha Ambrozy: I'm happy to talk anytime you'd like about it.

Mr. John Yakabuski: I know; you like talking.

The Chair (Mr. Monte McNaughton): Thank you for your presentation.

SURETY ASSOCIATION OF CANADA

The Chair (Mr. Monte McNaughton): We'd now like to call on the Surety Association of Canada. Good afternoon. You'll have up to 10 minutes for your presentation. If you'd begin by stating your name, please. The questions will begin with the government.

Mr. Steve Ness: Thank you, Chair. My name is Steve Ness. I'm the president and chief operating officer of the Surety Association of Canada. Thank you to the committee for the opportunity of appearing here today and offering our perspective.

Just by way of background, our association is the national trade advocacy group for the surety industry across the country, and in that role we represent surety companies, brokers, consultants and other industry-related groups.

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Let me say at the outset that our association and its membership strongly support the passage of Bill 142. We believe that this measure, as it's drafted, brilliantly achieves the near-impossible objective of striking that balance between the often conflicting interests of the various stakeholders across the construction industry.

We believe as well that there is a broad consensus—we've seen a bit of that today—on the most important parts of the bill, and we're confident that the regulations can properly address the details and the implementation of the bill, so that this all-important balance that was recommended in the expert review conducted by Mr. Reynolds and Ms. Vogel can be realized by the entire industry.

The way the surety industry works is that we extend credit to the construction industry—we have for more than 100 years—to secure performance and payment obligations. We give assurances to project owners that contractors are qualified to undertake and complete the project for which they're engaged, and we give assurances to subcontractors, suppliers and labourers that those bonded contractors will pay what they owe. If something goes wrong and the contractor can't perform or doesn't pay, then our surety bonds answer the call and meet those obligations.

This process that we have of evaluating the contractor's ability to perform its contracts and pay its trades and suppliers involves a very comprehensive due-diligence exercise that considers all the risks that could impact the ability to perform and pay. Some of those risks are, of course, construction-related, such as the complexities and challenges of designing, building and bidding a hospital, roadway or bridge, but other risks go beyond the four walls of the construction project. There are those business risks that, really, any business has to face: the risk of ensuring appropriate cash flow, of managing their debt, of meeting payroll and so on.

This due diligence that we undertake in our industry, we submit, is extremely important to the overall health of the construction industry in this province, as was recently reported in a 2017 study published by the Canadian Centre for Economic Analysis, which found that a non-bonded construction firm was 10 times more likely to fail than one of its bonded counterparts.

From our perspective, first of all we'd like to send out our congratulations to Minister Naqvi, not just for having the courage to bring this forward, but for the consultative process that he initiated, ensuring that all interests were represented and heard. As some of you know, our association has been part of that consultative process from day one. We participated as a stakeholder in the initial consultation conducted by Mr. Reynolds and Ms. Vogel, we met with the review panel, and after their report was published, we continued to provide commentary to the Attorney General and engaged in dialogue with several industry experts across the spectrum. Following first reading and Minister Naqvi's invitation to provide further commentary, we did that, with a written submission, and we look forward to continuing our participation.

I should say at this point that our industry is perhaps unique among the stakeholders whom you've heard from and are going to hear from. We work with the smallest little subtrade supplier, the largest multinational construction organization, and pretty much everything in between. We answer that call when the contractor can't perform, we pay the bills when the subs or suppliers don't get paid, and we interact with pretty much every tier and every sector: contractors, subcontractors, design professionals and owners. We reinforce good business practice and overall industry health.

Bill 142 represents a very strong step forward in the way our construction industry works in Ontario. The combination of modernized lien and trust provisions, along with clear prompt-payment requirements, all reinforced by an adjudication process to resolve the payment disputes very quickly, we believe will have a very positive impact on the health of the construction industry here in Ontario.

Companies will be stronger and better able to invest in growth and create construction capacity and employment. And because we're connected with those various sectors at every point, from top to bottom, we have a direct interest in the health of this industry. Remember that we're the people that get called in to clean up the mess that results when a contractor fails due to non-payment or due to late payment. Bill 142 is good policy, is very

much needed by the Ontario construction industry, and has our full support.

Again, from our perspective as a unique stakeholder with that clear line of sight, we encourage this committee to recommend passage of Bill 142 at the earliest convenience and look forward to assisting the government in finalizing regulations that will help make it a reality.

Before I turn it over to questions, I feel I should respond to some of the comments made by my friend Mr. Romoff this morning surrounding surety bonds on—

Interjection.

Mr. Steve Ness: Maybe I should shut up and just let it—

Mr. John Yakabuski: No, no.

Mr. Steve Ness: It might be part of the questions. He mentions surety bonds and AFPs, how they are probably not necessary because of the strength of the proponents, the large consortia. To that we comment that yes, perhaps none have failed thus far, but that's not the case throughout North America. There have been failures, and when one does fail, they fail magnificently. The risk is horrendous if they do.

The other thing is that strength of the consortia or the contractor notwithstanding, that does nothing to protect the trades and suppliers who may or may not be getting paid, for bankruptcy or for other reasons. Mr. Romoff mentioned letters of credit and other remedies. Well, I would submit to you that, among the surety bond package, surety bonds in the form of a labour and material payment bond are the only remedy that puts money—actual money—into the hands of an unpaid subcontractor or supplier. None of those other remedies do that, and, trust me, that can occur on any project, be it AFP or otherwise.

He also mentioned the cost as opposed to the commensurate benefits. Again, I have, Mr. Chair—and I apologize; I didn't bring one for every member of the committee, but I will certainly forward it and I'll leave this with you. This is the report of the study conducted by the Canadian Centre for Economic Analysis which shows that the cost of surety bonds is partially or totally recoverable by the government in terms of the benefits it brings. Governments can recover as little as 40 cents on the dollar and sometimes up to as much as $3 on the dollar, making it a net benefit.

Surety bonds also provide an economic benefit to the government in terms of bolstering GDP, creating jobs, the security which brings it to conclusion faster and more economically. This report sets that all out. I encourage committee members to read it. Again, I apologize for not having one for everyone, but I certainly will provide it, Mr. Chair.

The Chair (Mr. Monte McNaughton): Great. Thanks for your presentation. We'll move now to the government and Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you very much for your presentation. You've brought a lot of light to what your industry does and how it supports the construction industry.

The new surety bond requirements: How would they better protect subcontractors? You went into it a little bit, but I just wanted to know how the new requirements would better protect the subcontractors and suppliers.

Mr. Steve Ness: The surety bond package that's being prescribed by the act includes both performance and payment bonds. The performance bond guarantees that that contractor will perform, and stay in business longer to perform, which is obviously beneficial to the trades and suppliers. But, directly, it also includes a labour and material payment bond. This is an instrument that guarantees that subcontractors and suppliers to that bonded contractor will be paid 100 cents on the dollar for work completed. If that contractor, say, should fail due to bankruptcy or doesn't pay, the way this act is being set up, should there be a dispute—we've suggested that surety bonds be party to the adjudication process, so if the subcontractor does come out on top in the adjudication, the surety bond will respond and pay if the general contractor can't or won't.

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Mr. Lorenzo Berardinetti: Okay; thank you. One other question now: Some stakeholders are strongly opposed to the requirement for surety bonds on public projects. I think you heard that earlier, maybe from the first deputation this afternoon. What is your response?

Mr. Steve Ness: I think I talked about some of the issues surrounding the AFP and P3s. Generally speaking, I find it curious, because most of those who have spoken against it are avid users of surety bonds. They do now require performance and payment bonds—

The Chair (Mr. Monte McNaughton): Thank you very much. We're going to move to the official opposition: Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Mr. Ness. You certainly seem assured of yourself in your testimony today. I can't adjudicate between what Mr. Romoff and yourself have said, but we already—

Mr. Steve Ness: I'm right.

Mr. John Yakabuski: We're going to have him back. We already have the square here. The only thing left to be determined is whether they be 10-ounce or 12-ounce gloves. You can duke it out and we'll see what happens.

Anyway, listen: I appreciate your thoughts on the matter. Obviously it's not my field of expertise, but I'm sure there are some hidden government people here who are taking notes, and they're going to be taking that information back to the minister's office. We'll see what kind of amendments we do or do not get with regard to sureties, and we'll see who wins the day. Good luck.

Mr. Steve Ness: As Mr. Romoff said, I'm very happy to come and meet with the committee again, or with individual members of the committee at your convenience.

Mr. John Yakabuski: How about you send us a copy of that little book you've got, too?

Mr. Steve Ness: I will make sure every committee member gets a copy.

Mr. John Yakabuski: That would be great. Thank you very much.

The Chair (Mr. Monte McNaughton): Mr. Mantha?

Mr. Michael Mantha: You come from a different perspective, one that we haven't seen here today, and hopefully there are going to be others in days to come. From what you brought forward, you brought more of a discussion on the dollar values of everything and how it could potentially affect, either negatively or positively, those individuals.

If we don't bring in this legislation, if we don't move ahead with it, what are the negative impacts that are going to continue to happen in the industry?

Mr. Steve Ness: We're supportive of the legislation, not just for what surety bonds can do. As I said, we're the people who clean up the mess when a contractor fails because he hasn't been paid. We're so supportive of the prompt-payment initiatives, supported by the adjudication, which—I think Geza said it earlier: That's what makes it work.

We want to see improvements in the payment regime in the construction industry. That's probably our driving force and motivation. Surety bonds, we do believe, very much support that objective. As I said, we're the only people who provide the dollars to the sub-trades to keep that money flowing down the construction chain, and we provide economic benefits to the government simply by being there and ensuring that that prequalification is done, that the wheat is separated from the chaff and the contracts will get performed properly, providing the economic benefits to the government that come when that happens.

Mr. Michael Mantha: Before you leave here today, can we make sure that we exchange cards and contacts, so I can follow up? I'd really like to have a further conversation with you.

Mr. Steve Ness: I'm happy to do that.

Mr. Michael Mantha: Thank you.

Chair, you're on.

The Chair (Mr. Monte McNaughton): Great. Thank you for your presentation.

CARPENTERS' DISTRICT COUNCIL OF ONTARIO

The Chair (Mr. Monte McNaughton): I'd now like to call upon the Carpenters' District Council of Ontario.

Mr. Stephen Chedas: Good afternoon, everybody.

The Chair (Mr. Monte McNaughton): Welcome. Are you presenting alone?

Mr. Stephen Chedas: No, I'll be presenting with Nikki Holland.

The Chair (Mr. Monte McNaughton): Okay. I thought I saw Nikki back there.

Ms. Nikki Holland: I didn't want you to miss me.

The Chair (Mr. Monte McNaughton): Excellent. You'll have up to 10 minutes for your presentation. The questions this time will begin with the official opposition. State your names for Hansard, if you don't mind, please.

Mr. Stephen Chedas: Sure. My name is Stephen Chedas. I'm one of the lawyers at the carpenters' union. To my right is Nikki Holland. She is the director of public affairs at the Carpenters' District Council of Ontario, which I'll be referring to from now on as the carpenters' union.

First of all, thank you to everyone here for affording us the opportunity to give commentary on this extremely important piece of legislation.

Just a little bit about us at the carpenters' union: We are a union that represents 30,000 members working in the construction industry in the province of Ontario. We have 16 locals that span the province. The men and women that we represent are at the bottom of this construction pyramid, and they are the ones who rely on the steady flow of funds and, ultimately, their wages, to provide for their families, to provide for the necessities of their daily lives.

One of the things that I take care of at the carpenters' union is that I take care of delinquency. In my experience, by far the most common reason why one of our signatory subcontractors or contractors are not paying or cannot pay our members is because they themselves have not been paid by someone above them on the chain. That is the most common complaint that I hear.

What we do and what I do at the carpenters' union is that we spring into action when there's a failure to pay one of our members. We enforce our collective agreement, we file grievances and we take those grievances to arbitration at the Ontario Labour Relations Board.

Often what that enforcement includes is the filing of construction liens. Unfortunately, in my experience, they've often been complex, given the nature of the industry, and they've led to protracted litigation. Unfortunately, sometimes it has been years before our members receive the wages that they're entitled to.

We at the carpenters' union are very excited about this legislation. We think it's long overdue. We definitely know that it's needed and we welcome it in its form. Overall, we are very pleased with the content of the legislation. We believe that the legislation in its current form has met the government's mandate to ensure the steady flow of funds down the chain. The quicker funds go down the chain, the quicker that means our members will be paid.

We also applaud the extension in particular of the time to register liens from 45 to 60 days because, quite frankly, in my experience, being a union that represents thousands of members across the province, we have a finite period of time to collect all the rights and full information, and we're often left scrambling to do that. This extension of time alleviates that problem for us.

Nevertheless, there are two amendments from our perspective that I'm going to be speaking to today. We've expanded on them in the brief that I've provided today. They're quite technical, so I commend the brief to you at some point to read, but I'm going to give you a short synopsis in my short period of time today as to what those issues are.

They both relate to the definition of a workers' trust fund under the current legislation, which has remained unchanged in the new reforms. A workers' trust fund is

defined as a trust fund maintained on behalf of workers where monetary supplementary benefits are payable as wages. The key here, and what is missing, is the wage component of what a person receives when they work.

There are two amendments in the current proposed legislation that refer to this workers' trust fund, and they are section 31(2.1), which speaks to the expiry of workers' trust fund liens and makes clear that the lien expires on the date the final worker performs work; and also section 34(5) in the current amendments, which makes clear that a trustee of a workers' trust fund can claim the lien.

Although the carpenters are very supportive of both those amendments, to the extent that they are modified or contain the words "workers' trust fund" we are concerned that they may create confusion and be interpreted to create some sort of division between unpaid wages on the one hand and unpaid benefits on the other. The practical reality of why that's a concern for us is: When our members work on a construction site and receive their remuneration for the work that they do, they get paid on what is referred to in our industry as a total wage package. Our collective agreements expressly provide that.

The total wage package is made up of the daily or weekly wages, or take-home pay, as well as all the other benefits, or what's colloquially referred to as fringe benefits. Those are the health and welfare, the pension and all the other amounts that go to trust funds. Those are remitted to trust funds.

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For example, when our members are making $40 an hour, let's say, once you include all those supplemental fringe benefits, the total wage package is closer to $55 an hour. In virtually every case, when there's a default in payment by a contractor, we are enforcing for wages as well as fringe benefits, because again it's the total wage package, and the trustees as well as the trust documents provide for that enforcement. When we're jumping into action on behalf of our members filing the agreements and liens that I just mentioned to you, we're invariably doing so for both components of this remuneration.

Having a situation that I just described to you where it leaves ambiguity or confusion as to whether there's a separation between wages and fringe or monetary supplemental benefits has the potential to only create more litigation. I believe everyone would agree with me here that that is exactly what we're trying to avoid under the new reforms. Questions that possibly come to mind from this are: Do we have to file two liens for the exact same issue with respect to the same workers on the same site? I believe we want to avoid that. Also the question becomes, does the clock start ticking on the final worker, depending on whether the workers are owed wages purely or wage and benefits? This is not the situation that we want to create.

We want to make sure that the new legislation takes care of this issue, obviously, before passed, if and when passed. What we've done is we've made a recommendation, which you can find on page 10 of my brief, which creates a simple expansion of the definition of "workers' trust fund," which includes wages and speaks to the enforcement of both. In the end, that translates to an inclusion of about five words to the workers' trust fund, as it stands now.

Or alternatively—and again, I've put this in the recommendations—what the Legislature could do is add a clause that clarifies that a trade union, like the carpenters', can enforce payment of wages as well as the benefits in both scenarios, because quite frankly we work together with the trustees to do that anyway.

Moving on the last portion which the carpenters would ask that the Legislature look at again is the change to the definition of "improvement" in the definition section under the act—the current recommendations, rather. There has been an addition of the word "capital" to "repair," and what that signals to the carpenters is that the act is attempting to draw a delineation between construction versus maintenance.

The idea of construction versus maintenance is an area that is a highly developed area of jurisprudence at the Ontario Labour Relations Board. It's often litigated, and there is a good body of case law about that. We don't believe that the courts should be delving into that, specifically in the construction lien realm. They can, of course, do that on a case-by-case basis, but to add the word "capital"—we're a little concerned because a lot of the collective agreements that we are party to also have maintenance rates, which are at a lower rate, but the term "maintenance" is often, quite frankly, still "construction" at the Ontario Labour Relations Board, or has been decided to be construction. What we've done is we've recommended that that addition in the act be removed in its entirety and the status quo maintained.

But overall we are very supportive of this legislation. We would suggest that it get passed as soon as possible, and we do welcome it into the construction industry.

Subject to any questions, those are my submissions.

The Chair (Mr. Monte McNaughton): Excellent. Thank you very much. Each party will have a minute and 40, and we'll begin with Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Stephen and Nikki, for joining us today. Nikki knows; my son is one of your 37,000 members at Local 27 there.

Mr. Stephen Chedas: Great.

Mr. John Yakabuski: You're looking for some clarity with regard to wages, benefits and how the act might affect them. Question—and I know that you probably don't have this off the top of your head, but let's just say, for the sake of argument, for the last year that you'd have some data on, how big of an issue is this for your membership? How many times are we talking about members of your organization, your union, your 30,000 men and women, dealing with lost wages through issues with respect to payment and companies being unable to pay because they haven't got paid from the higher-ups?

Mr. Stephen Chedas: It keeps me, a group of support staff and some outside firms very busy, if that can answer

your question. I don't have the raw data for that. But I can tell you that it's an issue.

Mr. John Yakabuski: It's not a small problem, then?

Mr. Stephen Chedas: It is not a small problem. That is exactly why we believe that these reforms in particular are going to be very helpful to what we do on a daily basis, to the extent that we are attempting to move money quicker, which this legislation does, as well as honing in on disputes, integrating alternative dispute resolution and mechanisms into it. We believe all of these things are going to help get the money into the pockets of the people who did the work in the first place.

Mr. John Yakabuski: So when you're talking—

The Chair (Mr. Monte McNaughton): Sorry, Mr. Yakabuski; that's all the time.

Mr. John Yakabuski: You've got to be kidding me. My God.

The Chair (Mr. Monte McNaughton): A minute and 40 seconds.

Mr. Mantha.

Mr. John Yakabuski: It's Bill 142, and a minute and 42 seconds is about all I get.

Laughter.

The Chair (Mr. Monte McNaughton): Go ahead, Mr. Mantha.

Mr. Michael Mantha: I've seen the devastating impact this has had on your members.

Mr. Stephen Chedas: Yes.

Mr. Michael Mantha: I know personally of individuals who have lost their homes, their lives—everything—their business, their names, their families and everything. I know the great work that you guys are doing, as far as representing in order to correct this.

Mr. Stephen Chedas: Thank you.

Mr. Michael Mantha: Not doing this: What does this mean for you?

Mr. Stephen Chedas: On a personal level? Well, it makes my job easier. It allows me to help our members, which is my job, get paid quicker. It means a lot to me on a personal level, because I've had to deal with the members who don't have the money that they were counting on that week, that they and their families were counting on.

Mr. Michael Mantha: Having your members get that money now and being able to find a mechanism to litigate this and adjudicate it in order to pay their employees: What does that free up their time to do?

Mr. Stephen Chedas: That frees up their time to go out there and do more work in the industry. It helps them, quite frankly, in every possible way.

Mr. Michael Mantha: More work means what? More jobs?

Mr. Stephen Chedas: More work means more jobs.

Mr. Michael Mantha: More trades?

Mr. Stephen Chedas: More trades.

Mr. Michael Mantha: Do we not have a shortage in this province at this point of time?

Mr. Stephen Chedas: We do.

Mr. Michael Mantha: I think this would be a good step forward.

Mr. Stephen Chedas: Yes, it would.

Mr. Michael Mantha: All right.

The Chair (Mr. Monte McNaughton): We'll move to the government. Ms. Wong.

Ms. Soo Wong: Thank you, Stephen. Thank you, Nikki. Thank you for your advocacy work, because I believe you guys have been at this for a long time.

Mr. Stephen Chedas: We have.

Ms. Soo Wong: We really appreciate your leadership on this particular file.

I just want to get some clarification, because in your report you highlighted two concerns: One is the capital repair, and the other one dealing with the workers' trust fund.

I believe the expert report did improve the definition of the capital repair. I'm hearing now, Stephen, that you want to make sure that the definition is much more clear in terms of dispute, in terms of any kind of misunderstanding. Am I correct?

Mr. Stephen Chedas: That's right. At the Ontario Labour Relations Board, which I was talking about, there are often disputes as to whether things fall within the construction or maintenance world. Maintenance is not construction.

I understand the addition of the word "capital" to "repair" to delve into that. Obviously, that would possibly create more arguments coming from employers, say, that certain work that was defaulted on does not fall within the rubric of the Construction Lien Act, because it is not construction; it's something else.

That's part of my concerns. I do wish that there could be some more clarity, because just adding the word "capital" to "repair" might be construed as modifying and attempting to block, quite frankly, something that would otherwise be considered construction.

Ms. Soo Wong: Okay. No time—I can't ask any more questions. Thank you.

The Chair (Mr. Monte McNaughton): Great. Thank you very much. Thanks for your presentation.

Mr. Stephen Chedas: Thank you.

Ms. Nikki Holland: Thank you.

The Chair (Mr. Monte McNaughton): Thank you, committee—Ms. Wong?

Ms. Soo Wong: Mr. Chair, because we have hearings again next Wednesday, can we make sure that staff give us the list of the potential presenters early, as opposed to—

The Chair (Mr. Monte McNaughton): Yes. I did ask a couple of questions. The issue this week is that we need to get back sooner from each caucus their list. There was a delay this past week. If everyone can work together to respond back to the committee Clerk, we'll have those lists of presenters.

Ms. Soo Wong: Maybe, Mr. Chair, through you to the Clerk, they should hunt down the delinquents.

The Chair (Mr. Monte McNaughton): Well said.

We'll meet next Wednesday from 1 p.m. to 3 p.m.

The committee adjourned at 1450.

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